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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 561 (LAP)

5 STEVEN DONZIGER,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 August 12, 2019  
10 12:00 p.m.

11 Before:

12 HON. LORETTA A. PRESKA

District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

15 BY: RITA GLAVIN

16 BRIAN MALONEY

Assistant United States Attorneys

17 ANDREW FRISCH

18 Attorney for Defendant

19 ALSO PRESENT: Lea Harmon, U.S. Pretrial

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1 (In open court)

2 (Case called)

3 THE COURT: Good morning. Is the government ready?

4 MS. GLAVIN: Yes, your Honor. Rita Glavin, along with  
5 my associate Brian Maloney for the government.

6 THE COURT: Good morning.

7 Is the defense ready?

8 MR. FRISCH: Yes. Andrew Frisch for Mr. Donziger.  
9 Your Honor, good afternoon.

10 THE COURT: Yes, sir, good afternoon.

11 Officer, thank you for being here.

12 MS. HARMON: Yes, your Honor.

13 THE COURT: Counsel, where do we stand? I have  
14 Ms. Glavin's letter of last week, and I have Mr. Frisch's  
15 letter of today.

16 MR. FRISCH: If I could start, your Honor --

17 THE COURT: Yes, sir.

18 MR. FRISCH: -- if it's OK with Ms. Glavin.

19 So, Mr. Donziger is on electronic monitoring, as you  
20 know. He and his wife have executed affidavits of confession  
21 of judgment for the property they own together in Manhattan,  
22 and I showed them to Ms. Glavin this morning, and she and I are  
23 going to go to the clerk after court and make sure that we  
24 follow the appropriate protocol so that the property is  
25 properly posted.

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1           One cosigner has signed the bond, that's Mr.  
2           Donziger's wife; and we have had some difficulty with the other  
3           cosigner, as I have advised the Court.

4           A cosigner who was approved by the government declined  
5           unexpectedly to sign the bond on Friday, and we found somebody  
6           else, attorney Martin Garbus, who was willing to sign it on  
7           Friday, and is willing to sign it today. The problem is that  
8           he is enjoying his summer on the Cape, on Cape Cod.

9           Now, that presents a couple of options that we propose  
10          to the Court, one of which is that he be permitted to attend  
11          the allocution telephonically, answer the Court's questions,  
12          the clerk's questions, sign the bond via fax or e-mail, and  
13          then come in person when he is back in New York. We think that  
14          might make sense here because he has been an attorney admitted  
15          to the New York bar for 59 years, and unlike other cosigners of  
16          bonds, he well understands the import of signing a bond. But  
17          if we do that, he would come to New York, the courthouse, and  
18          sign the bond in person on September 9 when he is back in New  
19          York.

20          To the extent that that is not acceptable to the  
21          Court, we would ask that we have until the close of business  
22          tomorrow to secure the signature of a second cosigner. One of  
23          our options is for Mr. Garbus to take the ferry from  
24          Provincetown to Boston tomorrow, go to the United States  
25          courthouse there and sign the bond.

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1           The other thing I want to make reference to is the  
2     kerfuffle, if I can use that word, with the passports, because  
3     it's my fault and not Mr. Donziger's. I want to make that  
4     clear. When I was in his apartment last week he actually  
5     handed me these passport, these two expired passports, and he  
6     sought my advice, and I checked that they were expired, and my  
7     bad, it just didn't register to me that they should have been  
8     surrendered with the actual passport. So, it's on me, not Mr.  
9     Donziger.

10           There was a history with these passports that I was  
11     discussing with Ms. Glavin before court, in that there was a  
12     time when Mr. Donziger reported a passport lost because it was  
13     lost and thereafter he found it, so there was a time that he  
14     had two United States passports that were both extant. I can't  
15     figure out the mischief -- if I'm looking at it cynically, I  
16     can't figure out what the mischief in that would be but, in any  
17     event, the second extant passport expired, and now all the  
18     passports he has, extant and expired, have been surrendered to  
19     the court.

20           THE COURT: Yes, sir.

21           Ms. Glavin.

22           MS. GLAVIN: Your Honor, with respect to the  
23     passports, Mr. Frisch has made a representation to me that all  
24     passports and travel documents have now been turned over,  
25     whether expired or not. The reason we did raise inquiry last

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1 week with Mr. Donziger was because we had received information  
2 that there was some period of time in which Mr. Donziger had  
3 two valid U.S. passports, which you are not allowed to have.  
4 If you lose a passport and then you find it, you are supposed  
5 to turn it in. And that didn't happen.

6 We had some concern about that. We raised IT with Mr.  
7 Donziger. I then received Mr. Frisch's letter over the  
8 weekend, because I wanted to understand also what the dates  
9 were of the passports. SO, I have been assured by Mr. Frisch  
10 that we have the outstanding travel documents.

11 With respect to the second issue on the cosigner, I  
12 don't have an objection to doing a telephone call  
13 telephonically with Mr. Garbus, so long as it's OK with the  
14 clerk's office that processes this information on the fifth  
15 floor. And my understanding was that when you have an  
16 out-of-town cosigner, the normal procedure is for them to show  
17 up at a federal courthouse nearest to where they are to sign  
18 the bond. If the clerk's office and the Court are willing to  
19 go along with the procedure -- given that this is an attorney  
20 who is willing to sign the bond -- I don't object to it, as  
21 long as we have the interview with him today, we get the  
22 documents from him, and he could sign the bond remotely today  
23 and then within a number of days take a ferry to the courthouse  
24 and sign it there.

25 THE COURT: Officer Harmon, is that OK with you?

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1 MS. HARMON: Yes, your Honor. Our office doesn't  
2 handle anything with the cosigners, so I'm not familiar with  
3 the process, but it sounds reasonable.

4 THE COURT: OK. And do we know whether this is all  
5 right with the clerk's office?

6 MS. GLAVIN: I don't, your Honor. Mr. Garbus had  
7 reached out to me and asked about this, and I said I can't give  
8 him advice; what he would need to do is call. I gave him the  
9 number to call the clerk's office on the fifth floor. I think  
10 they gave him what is the standard procedure, and that  
11 subsequently prompted Mr. Frisch's letter over the weekend.

12 I am happy to address it with the clerk's office on  
13 five, or if Mr. Frisch wants to. I just want to make sure that  
14 we have a second cosigner on it as soon as possible.

15 THE COURT: Mr. Frisch, did you have any conversations  
16 with the clerk's office?

17 MR. FRISCH: No, Judge, I have not.

18 THE COURT: All right. Could I have the telephone  
19 number. All right. Off the record for a minute.

20 (Off the record)

21 THE COURT: On the record.

22 MR. FRISCH: May I be heard?

23 THE COURT: Yes.

24 MR. FRISCH: I want to clarify something. One of the  
25 options is that Mr. Garbus will travel from Provincetown to

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1 Boston tomorrow and sign the bond in Boston, and if he is  
2 willing to do that, ultimately that's fine with us. We believe  
3 he might be. But if not, we believe someone will sign the  
4 bond. We understand the importance of it.

5 THE COURT: What do we mean by someone?

6 MR. FRISCH: We will find another financially  
7 responsible suretor to the satisfaction of the government who  
8 will step in.

9 Given Mr. Garbus' age, we're reluctant to have him  
10 make that trip in advance of his expected return to New York,  
11 so I just want your Honor to know that it may be that he takes  
12 the ferry tomorrow, if your Honor so rules, but if not, we will  
13 see what we can do to find another suretor that is to the  
14 satisfaction of the government.

15 MS. GLAVIN: May I have a moment with Mr. Frisch?

16 THE COURT: Yes, ma'am.

17 MS. GLAVIN: Your Honor, I have had an opportunity to  
18 confer with Mr. Frisch, and given the circumstances in that  
19 from our initial appearance before your Honor to today Mr.  
20 Donziger has obtained counsel who has filed a notice of  
21 appearance, and in the discussions I have had with Mr. Frisch,  
22 it appears to me that he is very much on top of this and moving  
23 on the case, I would not have an objection to give 48 hours for  
24 a second cosigner, so long as Mr. Frisch is in regular contact  
25 with me regarding getting those people in and getting the

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1 documents signed, given what Mr. Frisch has brought up with  
2 respect to Mr. Garbus' age. But given the appearance of  
3 counsel who I think is well versed in the practices of this  
4 district, as well as the Eastern, I would not have an  
5 objection.

6 THE COURT: All right. Sir, we will extend the time  
7 for Mr. Donziger to obtain a second financially responsible  
8 person as a cosigner to August 14 close of business.

9 Is there anything else today, counsel?

10 MR. FRISCH: Nothing from Mr. Donziger, Judge, no.  
11 Thank you.

12 MS. GLAVIN: Your Honor, if I could just have a moment  
13 with Mr. Frisch.

14 MR. FRISCH: So, Ms. Glavin and I were talking about  
15 when we should schedule our next appearance and when we should  
16 propose to your Honor that we do so.

17 THE COURT: Yes, sir.

18 MR. FRISCH: There currently is a date of August 28,  
19 which I understood was for the purpose of Mr. Donziger having a  
20 lawyer by his side, and we have accomplished that today.

21 THE COURT: Yes, sir.

22 MR. FRISCH: Plainly I need -- and maybe Ms. Glavin  
23 needs as well -- a certain amount of time to get up to speed  
24 and understand the associated civil case and all the  
25 circumstances, which will take a certain amount of time. I



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1 also understand that Ms. Glavin has a trial coming up at the  
2 end of October.

3 What I think we would propose jointly -- Ms. Glavin  
4 will correct me if I'm wrong -- is that we put this down for a  
5 date in September, just to give the Court assurance that we're  
6 working diligently, so you can check in with us, not that we  
7 expect that we'll know exactly where we're going in this case  
8 by then, but so that your Honor has an opportunity to see us,  
9 and then we may be in a better position to set a schedule going  
10 forward.

11 THE COURT: Yes, sir. Let me ask you this, counsel.  
12 As you know, we had set trial for September 23. Do you want to  
13 come in on that morning for your update?

14 MS. GLAVIN: Yes, your Honor, that would work. And  
15 just to give a status report, I had informed Mr. Frisch that  
16 with respect to Rule 16 discovery, it would be the entire  
17 docket, which consists of almost 2300 entries and underlying  
18 documents.

19 In addition, there are various depositions that have  
20 been taken, including Mr. Donziger's, which are quite  
21 voluminous. I will be providing those to Mr. Frisch to the  
22 extent he does not have them already.

23 There is some voluminous discovery. If there are  
24 documents that Mr. Donziger does not currently have in his  
25 possession that are on the docket sheet, we will endeavor to

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1 get those, but we will be working at least to get him relevant  
2 depositions between now and our next conference.

3 MR. FRISCH: And, your Honor, that date September 23  
4 is fine for me and Mr. Donziger.

5 THE COURT: All right. So why don't you come in on  
6 September 23 at 10 a.m., and we will see where we are at that  
7 time, and I will then look to you folks to tell me when you  
8 want to put it down for trial or what else you want to do.

9 And again I guess I have not made a ruling that the  
10 Speedy Trial Act is applicable, but out of an excess of  
11 caution, is there any objection to excluding time between now  
12 and September 23 from calculation under the Speedy Trial Act in  
13 the interests of justice, assuming the Act is applicable?

14 MR. FRISCH: Your Honor, no objection from Mr.  
15 Donziger.

16 MS. GLAVIN: None from the government, your Honor.

17 THE COURT: Time is therefore excluded in the interest  
18 of justice.

19 Anything else today, counsel?

20 MS. GLAVIN: No, your Honor.

21 MR. FRISCH: No, your Honor. Thank you.

22 THE COURT: Thank you. Good morning, sir.

23 Thank you ladies and gentlemen.

24 Officer Harmon, thank you for being present.

25 (Adjourned)